

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GREGORY A. FRITZ,

Plaintiff

v.

TIMOTHY GARRETT,

Defendant.

Case No. 3:23-CV-00241-ART-CLB

**ORDER DIRECTING PLAINTIFF TO FILE
COMPLAINT, DENYING WITH LEAVE TO
REFILE APPLICATION TO PROCEED IN
FORMA PAUPERIS, AND DENYING
WITH LEAVE TO REFILE MOTION FOR
APPOINTMENT OF COUNSEL**

I. DISCUSSION

On June 6, 2023, Plaintiff Gregory A. Fritz ("Fritz"), an inmate currently in the custody of the Nevada Department of Corrections filed an application to proceed *in forma pauperis* ("IFP") and a motion for appointment of counsel. (ECF Nos. 1, 1-1.) Fritz did not, however, submit a complaint.

First, pursuant to Federal Rule of Civil Procedure 3, "[a] civil action is commenced by filing a complaint with the court." Fed. R. Civ. P. 3. While Fritz filed a motion, but not a complaint, no action has been commenced in this Court. Thus, Fritz must file a complaint with the Court to initiate an action.

Next, Fritz's IFP application indicates he is attempting to file an action pursuant to 28 U.S.C. § 2255. (See ECF No. 1 at 1.) However, motions seeking relief under 28 U.S.C. § 2255 relate to persons who are subject to current or future federal custody under judgment of that federal district court. See 28 U.S.C. § 2255(a). However, a search of the Court's electronic filing system does not show any federal criminal case or judgment related to Fritz in this Court. Further, based on Fritz's custody with the NDOC, the Court presumes Fritz is attempting to commence a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (state habeas corpus), rather than 28 U.S.C. § 2255 (federal habeas corpus). Thus, Fritz's IFP application, (ECF No. 1), is **DENIED** with leave to refile and to clarify the type of relief he is seeking.

1 Finally, Fritz submitted a motion for appointment of counsel, (ECF No. 1-1.)
 2 However, because no action has been formally commenced, a motion for appointment of
 3 counsel is premature. Accordingly, the motion, (ECF No. 1-1), is **DENIED** with leave to
 4 refile.

5 Based on all of the above, the Court will grant Fritz a **one-time** opportunity to file
 6 a complaint and a fully complete application to proceed IFP, or in the alternative, pay the
 7 full filing fee for this action on or before **Thursday, July 13, 2023**. Absent unusual
 8 circumstances, the Court will not grant any further extensions of time. If Fritz does not
 9 timely comply with this order, the Court will recommend that this case be closed.

10 **II. CONCLUSION**

11 Accordingly, **IT IS ORDERED** that Fritz's IFP application, (ECF No. 1), is **DENIED**
 12 with leave to refile.

13 **IT IS FURTHER ORDERED** that Fritz's motion for appointment of counsel, (ECF
 14 No. 1-1), is **DENIED** with leave to refile.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court will **SEND** to Fritz the
 16 approved form for filing a 28 U.S.C. § 2254 petition and instructions for the same.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court will **SEND** to Fritz the
 18 approved form application to proceed IFP by an inmate, as well as the document entitled
 19 information and instructions for filing an IFP application.

20 **IT IS FURTHER ORDERED** that Fritz will have until **Thursday, July 13, 2023**, to
 21 submit a complaint to this Court, and either submit a fully complete application to proceed
 22 IFP or pay the full filing fee for a habeas action.

23 **IT IS FURTHER ORDERED** that if Fritz does not timely comply with all aspects of
 24 this order, this case will be closed.

25 **IT IS SO ORDERED.**

26 **DATED:** June 13, 2023.

27 
 28 **UNITED STATES MAGISTRATE JUDGE**